KUMPULAN GUTHRIE SDN. BHD. v. NAIR

[O.C.J. (Wan Yahya J.) April 1, 1980]
[Malacca — Civil Suit No. 121 of 1979]

Practice and Procedure — Interlocutory injunction — Possession — Application to restrain defendant from remaining in quarters until trial — Effect of — Court's exercise of discretion to grant relief only in unusual circumstances.

The defendant in the present case was employed as conductor, Grade I, in the plaintiffs' estate. On June 5, 1979 the plaintiffs claimed that they had terminated the defendant's employment with the company and asked him to vacate the living quarters in the estate. The defendant contended that the termination of his service was illegal and he continued to be in occupation of the said quarters pending the outcome of the remedy he had sought under the Industrial Relations Act. On December 3, 1979 the plaintiffs filed a specially indorsed writ claiming for an injunction, vacant possession of the quarters, damages and costs. On December 22, 1979 the plaintiffs filed an *ex parte* motion for interlocutory injunction seeking *inter alia,* that the defendant be restrained until the trial of the action from remaining in occupation of the said quarters.

Held, dismissing the plaintiffs' claim: (1) although the motion in this case is made out to be and has the semblance of a restrictive interlocutory injunction, it is in effect nothing less than a mandatory injunction. An order that a person should refrain from coming into the house which he is occupying is nothing different from ordering him to vacate it;

(2) the power to dispossess a person of his living quarters and probably his sole shelter is a very serious one, especially so when the question of his dismissal or termination of service is being considered by a specialised agency established for such purpose;

(3) there is no justification for equitable intervention based on either irreparable damage or convenience in this case.

Cases referred to:-

(1) *Dodd* v. *Amalgamated Marine Workers Union* [1923] All E.R. 194.

(2) *Heywood* v. *B.D.C. Properties Ltd.* [1963] 2 All E.R. 1063.

(3) *Woodford & Anor.* v. *Smith & Anor.* [1970] 1 All E.R. 1091.

(4) *Manchester Corporation* v. *Connolly* [1970] 1 Ch. 420.

(5) *Sivaperuman* v. *Heah Seok Yeong Realty Sdn. Bhd.* [1979] 1 M.L.J. 150.

CIVIL SUIT.

Ong Chor Kweng for the plaintiffs.

Defendant unrepresented.

Cur. Adv. Vult.

Wan Yahya J.: The plaintiffs/applicants in this case are Kumpulan Guthrie Sdn. Bhd. and the defendant/respondent is employed as conductor, Grade I, in the plaintiffs' estate. On June 5, 1979 the plaintiffs claim that they had terminated the defendant's employment with the company and asked him to vacate the living quarters in the estate of which he was then in occupation. The defendant, contending such termination of his service was illegal, continued to be in occupation of the plaintiffs' quarters pending the outcome of the remedy he had sought under the Industrial Relations Act. On December 3, 1979 the plaintiffs filed a specially indorsed writ in this court claiming for an injunction, vacant possession of the quarters, damages and costs.

On December 22, 1979 the plaintiffs filed an *ex parte* motion for interlocutory injunction seeking, *inter alia,* the defendant and all persons holding under him, be restrained until the trial of the action from remaining in occupation of the said quarters.

At the hearing of the motion the plaintiffs were represented by counsel. The defendant appeared in person and was unrepresented. He stated that his matter had been referred by his Union to the Minister concerned under the Industrial Relations Act.

Having heard the brief address by counsel for the plaintiffs and reading the affidavit of the manager of the estate I held the view that it would be improper and unjust to exercise my discretion in their favour and I dismissed the application for the reasons following: —

(a) Para. 4 of the plaintiffs' supporting affidavit avers that wrongful occupation of the quarters by the defendant has caused them inconvenience and irreparable damage. They went on to some length in the affidavit to depict the particulars of the allegation, which, in brief, could be summarised as the inconvenience and strain caused to the new conductor when travelling to the estate from the nearest available accommodation, which is 10 miles away, and the inconvenience to the estate in not having him in the estate throughout the day.

I can see some inconvenience imposed on the estate by the defendant's act, but I am unable to accept these acts having any irreparable damage to the plaintiffs. A distance of 10 miles on a stretch of rural roads can be covered in less than 20 minutes if suitable transportation like a motor cycle is provided without causing undue mental and physical strain; and likewise as to his duty at the store, it could be temporarily taken over by someone residing within the estate and, although I find this particular assertion confusing in the light of the statement in the previous paragraph stating that the nature of his duties require the conductor to remain in the estate from 6.00 a.m. to 4.30 p.m. only.

The plaintiffs' alleged injury is not something tnat is so substantial and that which could not be remedied and/or atoned for by the award of suitable damages. The defendant's continued occupation will not diminish or destroy the subject-matter, i.e. the living quarters.

(b) If there is any irreparable damage suffered at all, it is most likely suffered by the defendant. The legality of his present occupation of the quarters will depend on the question of the termination of his service. Should the Industrial Court find in his favour and make an order for his reinstatement after he has been dispossessed of his quarters, he would have suffered an injury which could not be repaired. The defendant is an estate conductor and, although his wages or financial position has not been so far raised in these proceedings, it is common knowledge that they belong to the financially less fortunate class. The plaintiffs or the estate obviously possess sounder capability to meet expenses for the alternative accommodative and travelling arrangements in respect of the new conductor than the defendant, who, if dispossessed of his living quarters, may not have the financial ability to accommodate his family in rented premises. Any temporary ren-

tal of a house by the defendant may entail expenditure for two moves if he succeeds in his complaint to the Minister of Labour, whereas, if the plaintiffs win, they will only be subjected to one move, i.e. by the new conductor into the disputed quarters. If they lose and the defendant is required to stay on, they will not be put into any expense at all. On the balance of convenience I hold that it is the defendant who will stand to suffer more.

(c) The grant of the interlocutory injunction will have the practical effect of granting the sole relief claimed. If an interlocutory injunction of the kind is readily given without proof of unusual circumstances, there will be an upsurge of indiscriminate applications by plaintiffs seeking claims for vacant possession. These will, no doubt, cause a greater number of tenants to suffer at the hands of powerful and inconsiderate landlords. Litigants for such relief will choose at the slightest opportunity the High Court as the most favourable venue for a speedy solution to their claims.

No doubt, the principle as enunciated in *Dodd* v. *Amalgamated Marine Workers Union*[1] has been strongly distinguished in later authorities but nevertheless it is accepted as a rule of prudence to be applied by the courts. In *Heywood* v. *B.D.C. Properties Ltd.*,[2] in which case *Dodd's* case was distinguished, Dankwerts L.J., in the course of his judgment, said at page 1066:

"Finally, another objection is taken that to vacate the land charge in this case is equivalent to giving judgment on an interlocutory application in the action in favour of exactly the relief which the plaintiffs would obtain at the eventual hearing of the action in the ordinary way. It seems to me, however, that that is largely a matter which depends on the circumstances, and partly a matter of convenience...."

and further on his Lordship went on to say:

"...Therefore, so it seems to me, this is not a fatal objection and it all depends on the circumstances and the convenience of the matter."

It would appear from the above that unusual circumstances and the convenience of the matter have to be sufficiently established by the plaintiffs before an interlocutory injunction having the effect of granting the sole relief can be issued. I found no such unusual circumstances or convenience here — See *Woodford & Anor.* v. *Smith & Anor.*,[3] *Manchester Corporation* v. *Connolly.*[4]

(d) As the alleged injury on the plaintiffs consisted merely of the defendant overstaying the hospitality previously accorded him, it could be suitably remedied by the grant of adequate damages.

(e) At the worst the continued occupation by the defendant of the quarters would only implicate financial commitments but there is no evidence of any real threat to the plaintiffs' right or property which require immediate protection.

(f) In this instance it is the defendant who had been in occupation. His right to such occupancy, which has been allegedly terminated by the plaintiffs, is being challenged by him in the form of his complaint to the Minister of Labour and Manpower in accordance with the Industrial Relations Act. It is imperative that the *status quo* be maintained by allowing him to remain in occupation until such time as his dispute has been resolved.

(g) Although this motion is made out to be and has the semblance of a restrictive interlocutory injunction, it is in effect nothing less than a mandatory injunction. An order that a person should refrain from coming into the house which he is occupying is nothing different from ordering him to vacate it. The circumstances under which interlocutory mandatory injunctions could be granted are clearly enunciated in the Federal Court case of *Sivaperuman* v. *Heah Seok Yeong Realty Sdn. Bhd.*,[5] where Abdoolcader J. said:

"I would make two observations on the interlocutory injunction that was sought and granted.

The first is that it is couched in prohibitory terms restraining the appellants until the trial of the suit from remaining in the quarters but is in effect a mandatory injunction. Equity looks to the substance and intent and not to the form, and the interlocutory injunction sought and granted although prohibitory in language is mandatory in substance and effect *(Shepherd Homes Ltd.* v. *Sandham* [1970] 3 W.L.R. 348, 359, *Hounslow Local Borough Council* v. *Twickenham Garden Development Ltd.* [1970] 3 W.L.R. 538, 570-1) and as I said in my judgment in *Wah Loong (Jelapang) Tin Mine Sendirian Berhad* v. *Chai Nyen Yiok* [1975] 2 M.L.J. 109, an interim or interlocutory mandatory injunction is never granted before trial save in exceptional and extremely rare cases."

I am unable to detect any such circumstances in the motion and its supporting affidavit to make it fall within the ambit of exceptional and, least of all, rare case.

As I have been requested through the motion to grant a discretionary remedy, I have viewed it with caution lest my exercise of discretion should depart from the recognised principles of equity. The power to dispossess a person of his living quarters and probably his sole shelter is a very serious one, especially so when the question of his dismissal or termination of service is being considered by a specialised agency established for such purpose. I have given my utmost consideration to the contents of the affidavit in support of this application but found no justification for equitable intervention based on either irreparable damage or balance of convenience. My decision on this matter has been rendered much easier by the Federal Court decision in *Sivaperuman's* case, *supra*, which, in my view, is identical and on all fours with the facts of our present case.

For reasons above-stated I refused to exercise my discretionary powers to issue the injunction prayed for in terms of the plaintiffs' motion and I dismissed the application with costs.

Claim dismissed.

Solicitors: *Shearn, Delamore & Co.*